

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting to be held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, October 8, 2018, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Bill Byers; Guy Gentry, President; David Hachmeister; Bob Johnson; Amanda Mosiman; Doris Horn; and Jeff Willis.

Also present were Morrie Doll, Attorney; Sherri Barnhill, Executive Director; and Molly Barnhill, Assistant Director.

MINUTES: Upon a motion by Doris Horn and seconded by Bill Byers the Minutes from the regular meeting held September 10, 2018 were approved as circulated.

The President explained the rules of procedure. He stated the rezoning's would go to the Commissioners for final approval on Tuesday, November 13, 2018.

PC-R-18-14 – Petition of Evansville Christian School Inc. by Krista B Lockyear, Attorney to rezone 7.71 acres located on the W side of Epworth Rd. Approximately 0' W of the corner formed by the intersection Ashbury Parke Dr. and Epworth Rd. Being Lots 3 and 4 in Epworth Lincoln Sub. From an "A" Agricultural to "C-1" Neighborhood Commercial Zoning District. Ohio Twp. 4401 Epworth Rd. (*Advertised in the Standard September 27, 2018*)

Paul Blair, Evansville Christian School, and Krista Lockyear, Attorney, were present.

The President called for a staff report.

Mrs. Rector stated we have received all of the green cards from the notice to adjacent properties. She said there was no minimum lot size for "C-1" Neighborhood Zoning and the Comprehensive Plan shows commercial with bordering moderate to high density residential. She said the existing land use was Evansville Christian School. She stated the surrounding property and land use was to the north and west zoned "A" Agricultural and "R-2" with a religious facility. She said the property to the south was zoned "A" Agricultural and "R-1" with a church and single-family dwellings. She added the property to the east was zoned "R-1" with single-family dwellings. She said they have submitted a Use & Development Commitment limiting the "C-1" use to the digital signage to the existing school and prohibits a lot of the uses in a Commercial and Industrial zoning. She added that there was no flood plain and they have access to Lincoln and Epworth Roads. Mrs. Rector said the stated use was rezoning for sign purposes, which would be

allowed in "C-1". She stated in an agricultural zoning the maximum was 25 square feet total signage and that was why they wanted to zone it commercial, to have a sign out closer to the road so you could see where the school was. She said she did have one email of remonstrance that was included in your packets from Charles Huffman. She said he lived at 10377 Schnapf Lane. She stated he said, "The email would service as an objection for the rezoning of said Evansville Christian School from "A" Agricultural to "C-1" Neighborhood Commercial. First of all, he didn't know how the school was built in an agricultural zone. Secondly, you recently approved a large sign for the front of their building. If you drive past you can readily identify where you wish to go. Last of all, the area is constantly being polluted with signs that are totally unnecessary. In addition, the letter from Lockyear Law does not give any indication of the size of sign or if it was illuminated. Thank you for your cooperation, Charles Huffma." Mrs. Rector added that any lit up message board would require a Special Use by the Board of Zoning Appeals which was another public hearing.

Krista Lockyear stated unfortunately she did not have it in there; the dimensions of the sign would be 3' x 4'. She said it would be non-illuminated. She said at some point in the future, as Sherri pointed out, a message board might be desired, a lot of schools have gone to that, but they would have to come back before the Board of Zoning Appeals to get that approved. She stated yes, there was a large sign on the building but it was very easy to miss the turn into the school. She said she did it herself and she did the zoning on the school so she knew exactly where it was but as you drive down Epworth Road, it was a little confusing as to which entrance you actually need to turn into this school. She said there are a lot of nice trees out there in front so it really is, they believe appropriate and helpful to the students, family members, and visiting folks to be able to know exactly where to turn into the school. She said with that they would ask for the Boards approval and be happy to entertain any questions that they had.

The President asked for any questions from the Board members.

Amanda Mosiman asked if the Use and Development Commitment completely prohibited a lot of things in Industrial zoning and you have quite an extensive list there. She asked if there was anything left in the "C-1" that could go in there that wasn't included in the prohibited items.

Krista Lockyear said she would say there were and Sherri and Morrie could speak to that but what they did with that, which was an easy grab for them when they reached, when they did the original rezoning for the school they had many meetings with the neighborhood associations across the street to the east and to the south. She said out of those the uses that are prohibited in the Use and Development Commitment they created a private covenant that prohibits those uses as well. She said those are the ones that 10-15 years from now, they didn't want to see on site and that was why they grabbed those uses for a Use and Development Commitment.

Amanda Mosiman said for the Board's purposes there are a couple, one in particular, that was very ambiguous, and that would be section Y. She asked if they were allowed to have that in there.

Mrs. Rector asked what.

Amanda Mosiman stated in the Use and Development Commitment the prohibitive items, item Y, isn't that fairly ambiguous.

Attorney Doll replied yes, it would be difficult to enforce.

Amanda Mosiman stated she didn't know if they could have that in there.

Krista Lockyear said if the Board would like them to strike that from the Use Commitment, they could certainly do so.

Attorney Doll stated it created an ambiguity on the enforceability of that.

Mrs. Rector stated she wouldn't know how to enforce that.

Krista Lockyear stated they would be happy to remove that from the commitment.

President Gentry asked for clarification Y is any organization or use which violated the standard biblical Christian values.

Attorney Doll stated he didn't know how the Board would have the ability to judge that or enforce it.

Krista Lockyear stated she understood and that was part of the acquisition from Epworth United Methodist as well as Crossroads Christian Church hence the reason to have that in the private covenants but understood completely why the Plan Commission would want to stay out of trying to enforce that. She said they would strike that from the Use and Development Commitment.

Attorney Doll asked if they were asking to amend the application.

Krista Lockyear replied yes sir.

Mrs. Rector stated "C-1" Neighborhood Commercial, which was the lowest commercial zoning district, allowed. She said you could have an office, childcare, drug store, or neighborhood type businesses, interior decorating, offices, things like that would still be in a "C-1" and then residential.

Jeff Willis said he has a question on item A, it says any permissible uses in industrial zoning and he wasn't entirely familiar what was allowed in industrial.

Attorney Doll stated those were prohibited.

Mrs. Rector stated they would be prohibited anyway in a "C-1".

Jeff Willis stated he didn't know if schools or colleges were allowed in industrial or would that kick those out.

Attorney Doll stated this wasn't industrial it was agricultural.

Jeff Willis stated he understood.

Attorney Doll stated the applicant was just making it clear that no industrial zoning would ever occur in that district.

Jeff Willis said but the zoning kind of goes backwards so he wasn't sure if a school would be allowed in an industrial zoning.

Mrs. Rector stated she would look it up and tell him.

Jeff Willis asked if that would preclude them having a school there. He said it would be easier for them to get rid of it was where he was going with this.

Mrs. Rector stated SU(15) was colleges, university, and schools public and private and libraries. She said she thought it could go in any zoning with a special use.

Attorney Doll stated particularly if it was religious.

Mrs. Rector said yes.

Jeff Willis asked if there were any uses that were allowed and not specifically allowed in industrial.

Krista Lockyear stated the Use and Development Commitment was overly broad for zoning purposes but again they didn't want any of the neighbors to think they were trying to pull a fast one and sneak in that they allowed something that they had already agreed that would be disallowed.

Attorney Doll stated they could modify sub A if they wished. He said and after the word classification "except schools" or "excepting schools".

Krista Lockyear replied that would be certainly fine.

President Gentry asked exactly where the sign would be located. He said he knew there were regulations for that also. He asked if it would be on the north side or south side of the drive.

Krista Lockyear replied they were still trying to determine with utilities and etcetera, which side of the road and visibility would be the best. She said it was on the Epworth side of the school. She stated either right above the drive or right below the drive depending on which direction they were going. She said the exact location would have to go through site review to get that approved.

Ascertaining there were no remonstrators or questions from the Board the President called for a motion.

Amanda Mosiman made a motion to send PC-R-18-14 on with a favorable recommendation with the amendment to item “A” to include “except schools” and removing item ”Y” . The motion was seconded by Bob Johnson and approved unanimously.

Mrs. Rector asked Krista Lockyear if she would send her the revised Use and Development Commitment.

Krista Lockyear replied she would. She asked if she wanted it in word or just plain text.

Mrs. Rector replied word was fine.

President Gentry stated it would go to the Commissioners on November 13, 2018 at 4:00 p.m. here.

Krista Lockyear stated that sounded perfect, thank you.

PC-R-18-15 – Petition of Martin & Bayley Inc. by Mr. Troy Dietz, VP Real Estate

to rezone 3.056 acres located on the W side of SR 261. Approximately 0’ NW of the intersection formed by SR 261 and Oak Grove Rd. From an “A” Agricultural to “C-1” Neighborhood Commercial Zoning District. Ohio Twp. 7288 Oak Grove Rd. Complete legal on file.
(Advertised in the Standard September 27, 2018)

Troy Dietz was VP Real Estate with Martin & Bayley, was present.

Troy Dietz stated he was VP Real Estate with Martin & Bayley and they owned and operated the Huck’s convenience stores. He said also present were the current landowners Mr. & Mrs. Smith. He said their intent was to rezone so they could build a convenience store with fueling positions there on the site.

The President called for a staff report.

Mrs. Rector stated they have all of the return receipts for the certified mail to adjacent property owners except for one, they did have the white receipt, and it was sent to the correct address and in the correct time period. She stated there was no minimum lot size for “C-1” and the Comprehensive Plan shows moderate to high-density residential bordering public schools or recreational. She said the existing land use was single-family dwelling. She said the surrounding zoning and land use to the south, north, and west was zoned “A” Agricultural with single-family dwellings and a public elementary school. She stated the property to the east was zoned “C-1” with a bank and apartments. She said general information was gas station/convenience store in a “C-1” zoning. She stated they have submitted a Use and Development Plan excluding the following uses: broadcasting offices, studios, commercial childcare centers, clothing services, including dry cleaners and laundry receiving stations,

laundromats, dressmaking, milliner, tailoring, shoe repairs, and any residential uses permitted. She said there was no flood plain on the property. She stated the access was SR 261 and Oak Grove Rd. She said the stated use was a commercial convenience store, which would be allowed in the "C-1", and they also had met with the commercial site review committee and before any construction could take place, they would have to have approved drainage plans from the Warrick County Drainage Board. She stated they would also have to have approved entrances from INDOT on both SR 261 and Oak Grove Road; that became State controlled at that corner when they did the upgrade to the highway in that area. She said they would have to have all of that, water, sewer, and all of this would have to be in place before they could ever get a permit to start construction on anything. She stated the application was in order.

The President asked Troy Dietz if he had anything to add to the staff report.

Troy Dietz replied no, he was there to answer any questions they might have.

The President asked for any questions from the Board members.

Ascertaining there were no remonstrators or questions from the Board members the President called for a motion.

Bob Johnson made a motion to give PC-R-18-15 a positive recommendation. The motion was seconded by Doris Horn and unanimously approved

The President stated the application would go to the Board of Commissioners on Tuesday, November 13, 2018 at 4:00 p.m.

OTHER BUSINESS:

Complaint- Owner: Holly Woodruff. Unpermitted unattached accessory building. Appears to not meet set back and yard requirements. *6909 Crescent Dr.* September 17, 2018

Mrs. Rector stated that she had sent a letter and it had been removed from the property. She said she was renting the building and they just had them come back and get it.

President Gentry asked for a motion to find not in violation.

Jeff Willis made a motion to find not in violation. The motion was seconded by Amanda Mosiman and unanimously carried.

Complaint- Owner: Thomas Donnelly. Running three commercial businesses out of residence. *8200 Chestnut Dr.* August 28, 2018.

Mr. Donnelly was present.

Mrs. Rector stated three formal complaints were filed in the Area Plan Commission office between June 23 and August 3 stating that Mr. Donnelly has been running a tree removal service, yard-mowing business, and roofing repair business out of his residence. She said a letter was sent to the property owner on August 28, 2018 informing him of the complaints. She stated she gave him ten days to respond to the possible zoning violation in an "R-1A" Single Family Dwelling Zoning District. She said Mr. Donnelly called the office on September 12th stating he was not running a commercial business out of his residence. She stated she informed Mr. Donnelly that he would have to come before the Board and she would send letters to the people who filed the complaints requesting that they also appear. She said she felt that she could not make a decision based on the photos that were presented. She said there were additional photos in your packets that were taken by Mr. Gentry and some that were taken today also. She stated that along with the zoning violation the property also has three public nuisance violations filed through the Warrick County Board of Commissioners. She said the property owner received a letter on July 20, 2018 from the Commissioners stating after an inspection of the property the following types of nuisances were found; garbage, refuse, rubble, yard waste, and scrap metal. She said these types of violations would be taken care of by the Warrick County Commissioners under their new ordinance. She stated that is not us anymore. She said the only thing the Board was looking at was whether he was running a business out of his residence. She stated he was telling her he didn't and the persons who filed were saying he did.

President Gentry asked Mr. Donnelly if he was running a business out of his home.

Mr. Donnelly replied no.

Bill Byers asked if he could ask what the three businesses were again.

President Gentry stated logging...

Mrs. Rector stated no.

Mrs. Barnhill replied tree removal, yard mowing, and roofing repair.

Bill Byers said the one he heard was an excavation business.

Multiple people replied no.

President Gentry stated no, tree removal service, yard mowing business, and roofing repair business out of his residence. He said there are trucks and equipment there.

Mrs. Barnhill stated there was one complaint that included an excavating business.

Bill Byers replied exactly.

Mrs. Rector stated yes, there is one on a complaint. She said that was overlooked but the rest of them were the tree and lawn.

Doris Horn asked Mr. Donnelly how people got ahold of him in order for you to go remove a tree or any of the things they are asking.

Mr. Donnelly replied he knew a lot of people and it was pretty much by word of mouth. He said he did a lot of work for builders so he didn't actually run a business out of his house because he wasn't at his house very often. He said if he was running a business out of his house, he would be there but he wasn't there much. He stated he moved dirt, he had three skidsters, one excavator, and two dump trucks. He said he did a lot of dirt work but he didn't do it at his house.

President Gentry asked if he stored the equipment at his house.

Mr. Donnelly replied no, he would be lining both sides of the street for all of the stuff he had. He said it would be pretty hard. He stated he cuts trees sometimes but the stump grinders are not at his house. He said today he had some equipment at his house because he was grinding stumps. He said he had been grinding stumps in Hatfield so it was there. He said the lawn mowing business, he mows five yards and he didn't even have a lawn mower at his house. He stated it would be hard to run a lawn mowing business, if he mowed sixty and stored the equipment at his house on a trailer, he could see the point.

Doris Horn stated her thought was someone had to be able to get ahold of him in order to do this business. She said even if it was by word of mouth someone had to have called him.

Mr. Donnelly stated he had been doing this for ten years. He said he knows a lot of people and they call him on the telephone. He said that wasn't uncommon.

Mrs. Rector stated what she thought Doris was getting at was do you have a phone number listed some place that says tree removal call and gives a number and you do office work out of your house. She said she wasn't talking about employees.

Mr. Donnelly replied no, he didn't have employees.

Mrs. Rector stated you don't run any type of office work or anything out of your house.

Mr. Donnelly replied he didn't have employees parking in front of his house because...

President Gentry asked if he had another place where he stored his equipment.

Mr. Donnelly replied in Evansville.

President Gentry stated you do have a location in Evansville.

Mr. Donnelly replied it used to be in Newburgh and he moved from that building to another one in Evansville. He stated that was when all of the stuff was sitting in the driveway was when he moved from building to building. He said there was a dump truck of stuff in the wintertime. He said when you work seven days a week you don't always put a lot of effort into cleaning out your driveway. He said it really didn't affect a lot of people. He said except you get a bunch of old retirees like they had sitting there who don't have anything better to do except to complain. He said two of the three complaints had issues with him from a decade ago so they chose this option to retaliate. He said did it sometimes not look as good as it should, yes but running a business out of it, no. He stated if he was going to run a business out of his house he would be there but he was never there.

Mrs. Rector asked what the big blue container was for.

Mr. Donnelly stated it was a container that held the stuff from his garage because he was redoing his garage. He said he had pulled out the drywall redid ceilings and stuff like that. He stated you couldn't work in the garage when there were tools in it.

Mrs. Rector asked how long the container had been there.

Mr. Donnelly replied too long because he was paying O'Bryan's Storage for it but when you work seven days a week you don't have a whole lot of time to work on your own house. He said you know the cobbler with no shoes on his kids, and the plumber with the pipes that leak; that was him.

Mrs. Rector stated these things in your driveway and all of the accumulation of things that were in the pictures would be taken care of by the County Commissioners and their ordinance.

Doris Horn asked if he had ever claimed part of his house on his taxes as an office.

Mr. Donnelly replied no, that up until ten years ago he was a plant controller at a weekly/daily job so he had never converted it to a home office and didn't claim anything like that. He said you mentioned a letter on July 20th. He stated he didn't have a letter from July 20th if he heard them right.

Mrs. Rector stated that was given to her from the County Administrator, the County Commissioner's Administrator. She said he sent her a copy of it. She stated she didn't know if he got it or not but it was sent to him.

Mr. Donnelly said the only address he used was a post office box in Evansville.

Mrs. Rector stated it was sent to there. She said she didn't know he would have to ask their office. She said she just received an email from them with the letter.

Mr. Donnelly stated he had never spoken to them about anything the only time he did was when he called the Area Plan office and she told him he needed to come to the meeting so he did. Attorney Doll asked if anything had been posted on his property.

Mr. Donnelly said he spoke to Dan Saylor one day when he was there and he stuck it on a container and said it had been put on there before. He said he had never seen it. He stated Mr. Saylor said one of his neighbors must have pulled it off. He said great because Manny over there was down the street yacking with him. He said the only reason he knew that had happened was because he pulled up across the street and talked to them.

Mrs. Rector stated it was sent to him on July 20th from the County Commissioners office via certified mail return receipt to the post office box 5143 Evansville. She said she had a copy of that there. She said that was from the Commissioners he would have to take that up with them because they only gave her a copy of it. She said Dan Saylor was the one that would have went out and inspected his property she had read that in the report.

Mr. Donnelly stated he had spoken to him but couldn't tell them when that was.

Attorney Doll asked if he was there more than once but he probably couldn't answer that.

Bob Johnson said he had spoken to him once but he knew he had been there more than once because he had seen multiple pictures of his property.

Mr. Donnelly said it was a lot better than it was now but the whole question was whether he was running a business out of his house, no. He said if he was he would be there working out of his house and he wasn't there very often.

President Gentry asked if there were any remonstrators for or against that would like to speak.

Manford Rydholm stated he lived in the neighborhood. He said he had a letter from another person in the neighborhood, Darrel Heisler he couldn't be there that night, but said he could speak for him also. He said you had pictures and things like that; they speak for themselves on what was there. He said he wasn't running it out of his house but there are many times when there are trucks left there in the street. He said there are trailers in the front yard most of the time with something in them. He stated that may be a nuisance thing and not running a business but there is stuff being left there that shows every sign of it being a business operated there. He said equipment was left there at times. He said he may have to rent it but it was left there for a short term at least. He said there were a lot of other materials, some old doors leaning in there that shows some of the work that he probably did. He said he didn't know exactly what he did but he had seen mowing, tree trimming, and things like that and hauling away materials and what not with some of it sitting there for some period of time said to him he was using that to operate the business. He stated he thought there was plenty of evidence that that was going on there. He

said he didn't know what the post office box thing was other than a sham but that was neither here or there.

Marvin Pruett stated he had been a resident in that area for forty-five years. He said he had seen them come and go. He stated that Tom had done work for him and that business as far as he was concerned was being ran out of that residence because there was all kinds of equipment, there was bob cat usage, tree stump removal usage, two tandem trailers, and trailers setting in the yard. He said if that wasn't running a business, he wasn't against a man making a living or running a business, but a residential area wasn't a place for it. He said he thought it degraded the people around it. He stated he lived one street over and he thought it downgraded their neighborhood to have something like that happen.

Mr. Donnelly stated as far as the trailers setting in his yard there are 5' x 8' trailers, little ones that you pull with a pick-up truck. He said one of them that set there often was the neighbors because it doesn't fit in his driveway and he used it sometimes so it set in his front yard. He said why they set in the yard was the container was setting there. He said they aren't setting on asphalt. He stated if they were setting on asphalt or concrete there wouldn't be an issue but they happened to be setting in the front yard. He said one was a tilt bed trailer that he used for all kinds of things. He stated he pulled lawn mowers with it, hauls stuff to the recycle on it, and it was used for anything and everything. He stated as far as the doors that set outside two of them go on the walk out basement door that had blinds inside the glass. He stated it was something he would be putting in the house but it wasn't in the house yet. He said so yes they are setting outside. He said there was a fireproof file cabinet that was setting outside that would normally be in the garage. He stated to work in the garage it was in the way so he drug it outside. He said as for does it look good not particularly but was he running a business no. He stated if he had the equipment that he used for all of the business that he used because he also renovated houses he could line both sides of the street. He said he didn't bring it there and leave it there. He said if he had trees on a dump trailer it might set there for a day or two until he goes and emptied it and then hauled it away. He stated he did have two little trailers that set there but he didn't have big stuff that stayed there very long. He said if he had excavators setting there, he could cover up both sides of the street. He stated he didn't bring them there for one it didn't look good and two he didn't want people in the neighborhood tearing it up. He said if you knew the story from Friday night, they had people breaking into cars there and he actually chased them down and called the Sheriff. He said there was stuff that wasn't good that did happen in their neighborhood and it wasn't relative to someone living there for forty-five years has more of an opinion than someone who had lived there nineteen like him or somebody that moved in last week.

Mrs. Rector stated Mr. Donnelly this Board ruled, she couldn't remember exactly when, that used to you couldn't take any commercial vehicle home with you that was over a ton and a half. She said they had the discussion and the Board had them change that you could take a commercial vehicle home that you use for work but she thought they needed to determine whether all of this other stuff there constituted him having commercial equipment there and business things that needed to be placed in a commercial zoning. She stated she thought that was

what they needed to look at; just like excavating stuff that takes a commercial zoning for sure to put things like that in. She said you couldn't just take them to their house.

Mr. Donnelly stated the only time skids were setting at his house was in the wintertime when they had diesel jelled up so when it rained last year and was really cold they set there for a week because nothing would run. He said the last time the big dump truck, he had a 26,000 pound single heavy axel dump truck, set there was when he pulled it off of a job in Wyngate and brought it over for two days and parked it until his son went to where he needed to be because there was only one of him. He said he got it out of there because it didn't stay there. He said the big equipment doesn't sit there on the street or in the yard because he didn't want it there any way. He said it wasn't even in the neighborhood.

Doris Horn asked Mrs. Rector if that would be any equipment like the little trailer and stuff there or all of this.

Amanda Mosiman stated she had a little trailer that size.

Mrs. Rector said yes, people were going to have little trailers.

Doris Horn stated like his truck; didn't he actually use that in his business?

Mr. Donnelly asked the red truck.

Doris Horn replied yes, you had used it in your business.

Mr. Donnelly stated yes it had trees in it. He said the red truck was setting there because he used it for everything. He stated he hauled stuff to recycle; he buys stuff at auctions...

Doris Horn asked him if he brought anything home that you had trees or anything that was on your worksite that you had put in that little container.

Mr. Donnelly replied no, that container was all stuff out of his garage so he could work in his garage.

Bill Byers asked when you were asked the question on how long the container had been there all you said was too long.

Mr. Donnelly replied yes, a long time. He said what happened was there was a paying job to do, like the builder needed him to do something like today, he stopped doing what he was doing for himself and went and worked for the builder. He said it wasn't like he...

Bill Byers asked if it had been there a year.

Mr. Donnelly replied yes, it had been there for a year.

Bill Byers asked if he thought that was excessive.

Mr. Donnelly stated that money wise it was excessive to him but when it came down to working for somebody else he didn't get to determine his destiny. He said when the builder said he wanted that house done he had to work for the builder.

Mrs. Rector asked Bob, do you know if the container had been looked at under the nuisance ordinance.

Bob Johnson replied he didn't know if Dan had looked. He stated he knew he had seen it because he had been there but he didn't think he had looked inside it.

Mr. Donnelly stated they had talked about it. He said did it look good, no does it look terrible, no. He said there were other people....

Mrs. Rector stated sir there must have been a determination made by Mr. Saylor that you were in violation of their nuisance ordinance or you would not have been sent a certified letter by them. She said he had to certify that he was, so he did need to check into that because if it has been filed in court you didn't want to be found in violation of not showing up for court either. She stated he needed to check with the Commissioner's office to see what he needed to do to get out of their violations because the same ones that the Area Plan had were filed with them also. She said that was why Mr. Saylor was there.

Mr. Donnelly asked if they had an inspector that came around and looked at stuff.

Mrs. Rector replied Mr. Saylor.

Mr. Donnelly stated that he didn't say that the day he spoke to him. He said he didn't have a list of particular items.

Mrs. Rector stated she was just telling him that she had a letter, it was turned over to the County Commissioner's attorney, and it was supposed to be filed in court. She said whether it was or not she didn't know.

Bob Johnson stated that each Commissioner was the inspector for their particular district, so Dan would be the inspector for yours.

Mr. Donnelly asked if that was whom he needed to contact.

Bob Johnson replied he would think so.

Attorney Doll stated but the issue before this Board was to see if this constituted the operation of a business in a residentially zoned district. He said based upon the photographs you had seen and the explanation that they had heard was there a motion that could be made that said it was a zoning violation for the operation of a business in a residential district or it was not a zoning violation, based upon what you had seen.

Mrs. Rector asked what would he need to do, based upon your opinion, to where he would not be in violation.

Attorney Doll stated for an example to remove all of the business related items within 30 days. He said their Comprehensive Zoning Code had a violation enforcement clause at the back of the code. He said that allowed them to enforce the zoning violation if they deemed had occurred. He said he thought the first step was if they deemed there was a violation of the zoning for this particular property in the manner in which it was being occupied and used. He stated then did they want to give a period of time to rectify it that violation and should it not be rectified within that period of time then would they want to take the steps to enforce the zoning ordinances as to this property. He stated not all of that had to be done that night but he thought the first part of it.

Mr. Donnelly asked if he was not allowed to answer his cell phone for a work call when he was at home. He asked if that was running a business out of his home or was that just working when he was at home. He asked what if he was doing his taxes as a corp. was that working from home or was that his personal taxes.

Attorney Doll stated it seemed to him that the question was if it had an impairment to the neighborhood as a whole. He said you answering your cell phone sitting inside your home doesn't have any effect on your neighbors. He stated it didn't inconvenience them; they didn't have to look at his equipment, or etcetera. He said on the other hand if he had a yard full of equipment which he used to make a living...if he did, wasn't that the quintessential definition of operating a business?

Bob Johnson said counselor, he thought that question was asked when he replied that he used his big red truck, this 2 ½-ton truck, for his tree business.

Attorney Doll stated it wasn't a direct question, Commissioner. He said he didn't mean to be flippant about it. He stated he was allowed to have one work truck there.

Jeff Willis stated as long as he didn't use the jeep for work only the truck then that would be acceptable

Attorney Doll stated what you also had to say was they weren't dealing with the public nuisance aspect of this. He said that was no longer their business. He said it was just a question of whether they believed that was a business being operated in a residential district. He stated you might feel that you don't have enough evidence but you may feel that you did. He said you

might feel that it was but you might feel that it wasn't. He stated that was pretty much their options.

Mr. Donnelly asked if he could make a couple of statements.

Attorney Doll replied yes.

Mr. Donnelly stated he had no lawn mowers at his house that he uses to mow. He said they were stored somewhere else, they didn't stay at his house. He stated he didn't store them at his house, he didn't even have them in a yard barn. He said he didn't keep them there, he stored them at Willis Storage and they had been there for eight or nine years so he wasn't running a mowing business out of his house. He stated the red truck that you saw in the pictures was a 1-ton truck; a lot of people have a 1-ton truck. He said why it was setting in the driveway today was the pickup truck that he normally drove, the best truck that he had, blew a head gasket. He said it was normally the best-looking thing that he had setting there. He said the truck people were offended by was the red one. He said it was in the driveway, it wasn't parked on the street. He stated what was parked on the street was a Tacoma, a little pickup truck, that he did drive when he didn't work which wasn't often. He said what he normally had done was he took a work truck to where his equipment was parked at and took a big dump truck to the job do the work then brought the other truck back after that. He said sometimes he used a ladder that he had on the truck with him and worked in that neighborhood a lot. He stated like Marvin said, he had worked for him. He stated he had worked for him, he had worked for Marvin's neighbors, and he had worked for his neighbors. He stated for ten years he had worked a lot of places in the neighborhood. He stated it was odd that nobody right around him had said a whole lot but the people who had an issue with him, two of them and a person that submitted a letter but didn't show up. He stated that Darrel had a personal issue with him from ten years ago. He stated that in his opinion, not that it mattered, but the way they put in the ordinance gave people a way to retaliate and cause a problem but it didn't surprise him. He said it didn't look great but it doesn't look bad. He said was he running a business out of it, no. He stated if he was running a business out of it he would be there a lot more often, he would have people stopping by his house, he would be selling something, or doing services at his house but that wasn't what he did.

Doris Horn said she apologized, she did think this was a lot more but someone had explained to her that it wasn't but for her it did look like the back end of a lawn mower. She stated she wanted that on record.

Mr. Donnelly stated he understood.

Doris Horn made a motion that she thought that Mr. Donnelly was running a business out of his home and he was in violation, Bill Byers seconded the motion.

Jeff Willis abstained because Mr. Donnelly stated he was storing some of his equipment in his business.

David Hachmeister stated before you start the roll call, what the complaints were mostly, instead of running a business was he would want to clean it up to take care of his neighbors properties as well.

Mr. Donnelly stated correct, that was really the point that these had, was the stuff.

David Hachmeister asked him if he had thought about doing that.

Mr. Donnelly stated a lot of it had already been taken out of there.

David Hachmeister said he could understand driving a truck back and forth to work or leaving a trailer there but all of the other stuff setting around he couldn't. He said he thought the storage trailer had been excessive for what he had been doing.

Mr. Donnelly asked to see the pictures they had.

David Hachmeister stated if he lived in the neighborhood, he would worry more about getting it cleaned up rather than the vehicle sitting there.

Bob Johnson stated if the house was orderly and cleaned up he wouldn't be there today.

Mr. Donnelly stated what they had in the picture was the red truck that he had ground stumps with yesterday and today. He said the Jeep that was setting there, which he could drive and the container, which no one liked, and he agreed. He stated the trailer that was setting in the middle of the yard was actually used by the neighbor yesterday. He said tell him what they would like to not see in the yard so he didn't do this again and waste the Boards time and his because he should have been putting a floor in a house this evening instead of being at the meeting.

The President stated there was a motion and a second on the floor was there any other discussion from the Board members. Ascertaining there was no other discussion the President asked for a roll call.

Bill Byers - aye

Guy Gentry – nay

David Hachmeister – nay

Bob Johnson – nay

Amanda Mosiman – nay

Doris Horn – aye

Jeff Willis – abstained

The Board found Mr. Donnelly not in violation of running a business out of a residence with a vote of 4-2 with one abstention.

Attorney Doll stated that didn't remedy the issue with Mr. Donnelly and the Commissioners. He said he would still have to deal with the County Commissioners on the nuisance complaints. He stated that Mr. Donnelly needed to talk to Commissioner Saylor as soon as he could because that might be headed to court.

Mr. Donnelly stated he had no idea.

Attorney Doll stated that was why he told him.

President Gentry stated what the Board also wanted to caution him on was even though he had been found not in violation he wanted to make sure to not bring any business equipment home at all if possible. He said they understood if he would have a truck now and then, otherwise it had the appearance that you were running a business though.

Mr. Donnelly stated if he was working then he would have had more tools to work on equipment. He said if he had worked on a skidster in the driveway it might be there for two days, it wasn't staying there or living there it wasn't like he had a gated front yard to keep stuff.

President Gentry stated to work on them at the place in Evansville would be even better.

Mr. Donnelly replied correct, but when it was dark outside and most of your tools, which he was going to use to work on a piece of equipment...

Attorney Doll stated then that sounds like you were running a business at your home.

Mr. Donnelly said hold on, if you couldn't take all of the tools on a truck like right now and the truck was broken down and setting on that lot where it was.

Attorney Doll stated if he was repairing equipment at a residence it sounded like he was running a business. He said he could not do that in a residential district. He said he needed to have a business location that was correctly zoned for business activities like repairing things, storing things, stacking things, and parking things. He stated that was his home and it wasn't meant to be a business; it was in the wrong zoned district to be a business. He said that wouldn't fix what the Commissioners were looking at. He stated he couldn't blend them. He said if he blended them, he would be right back before the Board again with a zoning violation. He stated he cautioned him to not to do that. He said to conduct your business at the business location and live at his residential location and to keep them separate. He added do not ignore the Commissioners nuisance problem. He said that would get him in court quicker than he could imagine and he wouldn't like the outcome.

Mr. Donnelly said he wouldn't because he wanted to find out about it anyway. He stated the point he was trying to make was the truck that had the majority of the tools that he would work on equipment with was at the commercial location but not functioning at the moment.

Mrs. Rector stated Mr. Donnelly, you were probably better off just accepting the Board's vote and handling the situation with the Commissioners.

Mr. Donnelly stated that was what he was trying to do but he wanted to clarify that statement. He said too much detail though.

Mrs. Rector replied yes.

Bob Johnson said Mr. Donnelly as a Commissioner he wanted to say as far as the nuisance complaint, he said it had nothing to do with this Board, but he knew it was in process of being filed with a lawyer. He said he would need to call Dan and find out what he needed to do to get that corrected.

Mr. Donnelly stated besides the one day when they spoke outside his house and that had been at least a month ago, he had heard nothing. He said he would call them and ask them what he needed to do.

Rolling Hills Park Part 1 – Sally Eissler. Wanting to sell part of Lot 4 in Rolling Hills Park Part One. Illegally divided in 1977 and again in 2000.

Mrs. Rector stated (looking at pictures of the aerial and plat maps) you could see it on the aerial where they had the different tax numbers. She said you could see the property lines and see how it had been divided. She stated they had a portion left in the back that was all of Lot 4 in the original plat. She said it had been divided up, which they didn't go through the office.

Bob Johnson asked where this was.

Mrs. Rector replied it was right by Rolling Hills Country Club on Miller Ln. She asked Molly when Mrs. Eissler purchased the property. She said she wanted to build a house there on what was remaining.

Attorney Doll asked in the corner.

Molly Barnhill stated she bought the corner lot and the one right above it that wasn't involved in this at all. She said she bought those two lots together and now she wanted to sell the little piece in the corner, that was split.

Mrs. Rector said she had bought all of this but she wanted to sell that in the back.

Molly Barnhill said she bought the one little...

Mrs. Rector asked her to come and show them on the map. She said Molly had talked to Todd, her son, when he came in.

Molly Barnhill said she lived in the house just north of where the road turned north. She said she bought the lot just south of it on the corner and now she wanted to sell the lot on the south.

Attorney Doll asked if she lived in 005.

Molly Barnhill replied yes.

Attorney Doll asked if she wanted to sell 008.

Molly Barnhill replied yes, she owned both of those lots. She said she bought them together now she wanted to sell 008. She stated they wanted to make it a building site.

Mrs. Rector stated it wasn't approved that way in the original plat back in 1972.

Amanda Mosiman said 008 and 005 she couldn't see, what were all of these a part of originally.

Mrs. Rector stated Lot 4 where the corner was went all of the way over.

Amanda Mosiman said thanks Molly got her squared away. She said this used to be part of this lot.

Mrs. Rector replied all of this used to be one lot.

Amanda Mosiman stated this was apparently not a building site in the original plat.

Mrs. Rector stated that was by itself and now they had taken it and taken it and now only had that left. She said they added these to it.

Amanda Mosiman said this was as clear as the Mississippi.

President Gentry said not with additional building spots that went with the one property. He said there were originally only two lots there any way and then it ended up being four and now it would be back down to two again.

Molly Barnhill replied it would be the same number.

Amanda Mosiman replied yes it would still stay four.

Mrs. Rector said it would still stay four. She said she would tell them she did have an attorney but she didn't know his name, he came in because his mother lived in that subdivision and he

was friends with Mr. Miller and they wanted to make sure that the office didn't give him permits on this lot because it was never an approved subdivision. She said that was why she had brought it before the Board. She said it was things that happened years ago.

President Gentry asked if it was an approved subdivision.

Mrs. Rector replied what they did wasn't approved. She asked who do you make do it because Mrs. Eissler didn't do it. She said the other people did it.

President Gentry said originally, there could have been two homes in there. He said one on the corner and one at the road and that was all that would be there now.

Mrs. Rector replied yes.

Jeff Willis asked if they wanted to put another house back in the corner.

President Gentry replied yes, but there would still be two owners.

Attorney Doll stated but the lot line had been moved. He said if you looked at the plat page in your packets this was a six-lot subdivision created in 1972. He said it would still be a six-lot subdivision. He stated the issue was the west property line between Lot 3 and Lot 4 had been moved.

President Gentry stated a lot line adjustment.

Attorney Doll replied in a way except they didn't come through the office to move it they just deeded it between parties.

Mrs. Rector stated lot line adjustments are no more than 10 feet.

Attorney Doll stated what it was now was she wanted to be able to sell Lot 4 on what was left of Lot 4. He asked Sherri if he was correct.

Mrs. Rector replied yes.

Attorney Doll stated she wanted to be able to sell it as a residential building site.

President Gentry said she wanted to build on it. He said so they were trying to create another lot then.

Mrs. Rector replied no, it was already a lot.

Amanda Mosiman said she apologized for her exit but she had to be at her second meeting tonight.

President Gentry asked if she had an opinion before she left.

Amanda Mosiman said she deferred to the rest of the Board.

Attorney Doll stated he thought it would have to be replatted.

Mrs. Rector asked who would do it.

Attorney Doll stated he thought who owned Lot 4 now. He said she does and thought she was the one that would need to replat it with the consent of all of the other landowners in the neighborhood.

President Gentry stated that was what they would do for an original one.

Attorney Doll stated that was what the Board would have done originally.

Mrs. Rector said they would do a replat of Lots 3 and 4.

Attorney Doll said yes.

Mrs. Rector said Lot 3 she doesn't own.

Attorney Doll stated that Lot 3 would want to join her in the replat to get to keep the property that he had paid to buy to add to his land. He said it would help Lot 3 it would make Lot 3 fully legal and it would make Lot 4 factually correct now. He stated he hoped Lot 4 would still be big enough to be a building site but he didn't know.

Mrs. Rector stated she didn't know either.

Bill Byers asked what about 07. (Referencing numbers on the aerial map)

Attorney Doll stated he didn't see Lot 7.

President Gentry stated that 07 went with 03.

Jeff Willis asked if 04 was part of 08.

President Gentry replied yes.

Jeff Willis asked or was it a part of 07.

President Gentry stated that right now she owned 04 and 08.

Attorney Doll stated she owned 04 and 05.

President Gentry asked who owned 08.

Attorney Doll stated there wasn't a 08.

Jeff Willis stated not Lot 8 but the 08 on the aerial.

Mrs. Rector stated they were talking about the tax code numbers

Attorney Doll stated he was looking at the plat, which made more sense to look at to him.

Mrs. Rector asked what you were saying then unless the two people get together and do a replat that are now owners of Lots 3 & 4 then the office could not issue any permits.

Attorney Doll said that would require the consent of all of the neighbors at least not their objection.

Mrs. Rector stated it was already split.

Attorney Doll said but they want to move the split.

Mrs. Rector stated they don't want to move it now it was already moved.

Attorney Doll replied then they want to bless it, which they did illegally previously was what they were doing. He said so she could get a building permit to build her house.

Jeff Willis stated some of the neighbors might not want another house back in their backyard.

Mrs. Rector said she knows. She stated it would normally be a final plat because there were no new building sites and they would notice the homeowners association in there.

Attorney Doll stated there probably wasn't one.

Mrs. Rector said no probably not.

Attorney Doll said from 1972.

Mrs. Rector said unless she could get everyone to go along with it then she was dead in the water on being able to build a house.

President Gentry replied yes.

Bob Johnson asked how they had split this up without going through the Area Plan Commission.

David Hachmeister stated they said it was an illegal split.

Bob Johnson asked how it got on the mapping system.

David Hachmeister replied he didn't know that.

Bob Johnson asked how it was split up that way.

Mrs. Rector stated you could do it by deed.

Attorney Doll stated that people do it all of the time.

Bob Johnson stated but it was in our mapping system and our tax base like this.

Mrs. Rector stated because the Auditor's office took the deeds and split them out.

Attorney Doll stated some counties required all deeds; our county doesn't want to do this he wasn't asking to do this, to go to the Area Plan Commission office before the Assessor's office, Auditor's office, and Recorder's office.

Bob Johnson said that made sense.

Attorney Doll stated to verify that they hadn't violated the subdivision rules. He said they weren't asking for that they were just stating that some counties do that.

Mrs. Rector stated she didn't have enough people to check every deed that was recorded in Warrick County.

Attorney Doll said at least within their jurisdiction of this county.

Mrs. Rector stated sometimes they would call from the Auditor's office and say someone was trying to record a deed and they didn't have anything on file. She said they did do that now sometimes but not every time. She said then you get into this mess.

Mrs. Rector asked if they needed to vote on that.

Attorney Doll replied no, there wasn't a motion or anything before the Board.

President Gentry stated it was just a reference to it.

Mrs. Rector replied okay.

Hidden Trail Court Sec. B- Consensus on vacating 20' wide shared driveway easement on lots 10 & 11.

Mrs. Rector stated back in 2002 Hidden Trail Court Subdivision was approved and recorded. She continued it was a modular home subdivision and they should have a copy of the subdivision plat in their folder.

Attorney Doll added Lot 10 and Lot 11.

Mrs. Rector stated it was approved as a 20' driveway easement that ran along the lot lines of Lot 11 and Lot 10, for them both to be used to get back there. She stated the other day she had received an email forwarded by Morley informing the office that they are trying to vacate that shared driveway easement that was recorded. She stated she replied to that email stating she did not know whether they could do that or not. She added if the Board looked at these aerials they could see why it is a shared driveway, because it runs right between the pits on both lots and it is not very wide at all. She stated the property owners are not getting along anymore, so they went out and decided to place a fence down the middle of it and we do not know if a firetruck or anything can get across it.

Attorney Doll stated he thought what the Board would look for is the wishes of the Board about how to address this problem. He added he talked with Sherri about it earlier that day and he believed it took two things; he said he thought it took a replatting of this subdivision and a really good hold harmless agreement protecting the County.

Doris Horn stated she remembered this and thought the Board had done a hold harmless on that piece.

David Hachmeister added he was trying to find a road.

Attorney Doll asked how long ago was this.

Bob Johnson stated your name is on the plat Doris.

Mrs. Horn replied you see I remember that.

Mrs. Rector stated Bobby Howard, of course we are looking at a private street and driveway, but his question too, besides the emergency vehicles, was that it needed to be filled in on both sides in order for it to be wide enough. She added Morrie and herself were talking and she was not going to say yes they could vacate that because she didn't know. She stated she thought they needed to amend the plat and the Board needs some kind of guarantee from the fire department and places stating those vehicles can get back there the way they had it divided.

Bob Johnson asked are either one of those homes.

Attorney Doll and Mrs. Rector replied one is.

Mrs. Rector added the people who own Lot 11 their house is on Lot 12. She added now the email that she had received stated that the guy said he had Aigner's out there and they did this and that and they said everything was okay. She added I don't know if everything is or not. She proceeded to read the email, it stated "Jerry Aigner did our driveway work. The driveway is wide enough for a firetruck or ambulance to get down it from each separate drive. We widened our side and put a Tennessee crossing."

Bill Byers stated this was not Tennessee.

Mrs. Rector stated did that look like a Tennessee crossing?

Bob Johnson added this wasn't Tennessee.

President Gentry stated they could see the culvert exposed totally underneath of it.

Mrs. Rector stated the email continued "there had been stats down the middle of the property lines so there is a driveway for just John and a driveway for myself (the owner). John laid down some telephone poles on the ground to separate the driveways also, and moved his mailbox."

Attorney Doll stated it sounded like these people disliked each other.

Mrs. Rector added evidently a lot.

Jeff Willis stated oh we have had people build a four foot berm so they could build an eight foot fence on top of it just to get away from each other and then they share the price of the fence and the berm.

Bob Johnson asked where the property was.

Mrs. Rector replied out off of Folsomville and Crowville Road.

Bob Johnson replied well that explains a lot.

Attorney Doll stated the question to the Board is do they want to instruct Sherri to tell them to amend the plat to do away with this shared easement for ingress and egress and substitute acceptable separate ingress and egress's, and also that they would have to enter into a very good Hold Harmless agreement.

Mrs. Rector stated she would feel more comfortable with it being an amended plat that would have to be heard by the Planning Commission and be approved, not just herself.

Doris Horn replied she would make that motion.

Mrs. Rector added she did not know anything about road construction, Tennessee crossing, or anything like that.

Bob Johnson asked Sherri didn't they have to share this (referring to the easement).

Attorney Doll replied yes. He added well it was pinched between the two pits and he did not think it was wide enough to constitute two separate roads.

Mrs. Rector stated she did not think they should be able to vacate it. She said she thought it should be one shared drive with nothing going down the middle of it for safety reasons and stuff.

Attorney Doll added he was still not comfortable with the Tennessee Crossing.

Bob Johnson stated that it looked a little shaky. He added his concern was if a house caught on fire then how would a fire truck get over there.

Attorney Doll added if they could not get there then they would sue the fire department for not getting there to put their fire out.

Inaudible...

Mrs. Rector stated well then they would land lock the lot. She added it would have to stay and they would have to plat it together.

Attorney Doll asked what did the Board want Sherri to tell them.

Doris Horn stated she thought she had made a motion.

Attorney Doll asked there was a motion.

Doris Horn replied yes she had made a motion.

President Gentry asked a motion to replat.

Doris Horn replied yes.

Mrs. Rector stated an amended plat and they would come before the Board.

Doris Horn again, made a motion for an amended plat that would come before the Board. The motion was seconded by Bob Johnson and the motion carried unanimously.

* * *

Attorney Doll asked what was going on.

Bob Johnson replied this gentleman was wanting to talk.

Manford Rydholm asked if he could just make some comments before the Board left.

Mrs. Rector replied yes.

Mr. Rydholm stated he just wanted to say he appreciated them listening but he couldn't hardly hear Tom to come up and refute what he had said when. He said he felt bad about that and he thought there were misleading comments made. He stated he understood they had made their decision, but he thought they would be back to deal with that. He stated they are disappointed but he was not telling the truth as far as equipment being in there and evidence of some sort of a business.

Guy Gentry stated he had went by there three times himself and there were only three things that he saw: the red truck, the jeep, and the container with the little trailer. He added all of that stuff is a nuisance thing that Commissioners are going to take care of under their policy they would get that cleaned up, and he thought that would make it clear if there was more apparatuses there that would constitute a business.

Manford Rydholm stated he appreciated it but he just...

Marvin Pruett interrupted the main concern was that tandem trailer he had his bobcat on and saw was parked out in the street and if we had a fire or something the fire truck would not be able to get through.

Guy Gentry stated yes and that he did not see it either time he was there. He added he was not saying it was not there but...

Marvin Pruett stated it was not there all the time.

Guy Gentry stated it is hard for the Board to make a determination based on pictures at a certain time.

Mrs. Rector added they needed to start taking more pictures and documenting when these things...

Jeff Willis stated the stuff that is on the side and back of the house was a nuisance and that was what the Commissioners would take care of, and they could be more aggressive with that sort of thing.

Marvin Pruett stated he did not really understand the container though. He stated he had been there forty-five years and he did not complain to anybody. He added he tried to keep to himself,

but that container had been there at least a couple of years and there was a big box that he had out there. He stated he knew he was storing stuff in it; he was storing equipment in it.

Guy Gentry stated the nuisance people should be able to tell that. He added they should have the authority to look into that sort of thing. He stated the commissioners would be where they would start and then go from there.

The Board agreed, stating yes.

ATTORNEY BUSINESS: None

EXECUTIVE DIRECTOR BUSINESS: None

Doris Horn made a motion to adjourn the meeting. The meeting was seconded by Jeff Willis and the meeting adjourned at 7:07 p.m.

ATTEST:

Sherri Rector, Executive Director

Guy Gentry, President